

Judge Rothstein



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MAY 31 2001

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v

NAZIYR YISHMAEL,

Defendant

NO. CR01-171BJR

PLEA AGREEMENT



CR 01-00171 #00000006

The United States of America, by Katrina C. Pflaumer, United States Attorney, and Kurt P. Hermanns, Assistant United States Attorney for the Western District of Washington, and the defendant, NAZIYR YISHMAEL, hereinafter defendant, and his attorney, Brian Tsuchida, enter into the following Agreement, pursuant to Rule 11(e), Federal Rules of Criminal Procedure.

1. The Charge. The defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and to enter a plea of guilty to bank embezzlement, as charged in Count 1, in violation of Title 18, United States Code, Section 657. By entering this plea of guilty, the defendant hereby waives any and all objections predicated on the form of the charging information.

2. The Penalties. The defendant understands and acknowledges that the statutory penalties for the offense of bank embezzlement, as charged in Count 1, are imprisonment for up to thirty (30) years, a fine of up to one million dollars (\$1,000,000),

1 a period of supervision following release from prison of from three (3) to five (5) years,  
2 restitution, and a one hundred dollar (\$100.00) penalty assessment. The defendant  
3 agrees that the penalty assessment shall be paid at or before the time of sentencing

4 3. Rights Waived by Pleading Guilty. The defendant understands and  
5 acknowledges that by pleading guilty he knowingly and voluntarily waives the following  
6 rights:

- 7 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 8 b. The right to be presumed innocent until guilt has been proven at trial,  
9 beyond a reasonable doubt;
- 10 c. The right to trial before a jury of the defendant's peers, and at that  
11 trial, the right to the effective assistance of counsel;
- 12 d. The right to confront and cross-examine witnesses against the  
13 defendant;
- 14 e. The right to compel or subpoena witnesses to appear on the  
15 defendant's behalf;
- 16 f. The right to testify or to remain silent at trial at which such silence  
17 could not be used against the defendant; and,
- 18 g. The right to appeal a finding of guilty or any pretrial rulings.

19 4. Applicability of Sentencing Guidelines. The defendant understands and  
20 acknowledges the following:

- 21 a. That the United States Sentencing Guidelines, promulgated by the  
22 United States Sentencing Commission, are applicable to this case;
- 23 b. That the Court will determine the defendant's applicable Sentencing  
24 Guidelines range at the time of sentencing;
- 25 c. That the Court may impose any sentence authorized by law,  
26 including a sentence that, under some circumstances, departs from any applicable  
27 Sentencing Guidelines range up to the maximum term authorized by law;
- 28

1 d. That the Court is not bound by any recommendation regarding the  
2 sentence to be imposed, or by any calculation or estimation of the Sentencing  
3 Guidelines range offered by the parties, or by the United States Probation Department;  
4 and,

5 e. That the defendant may not withdraw a guilty plea solely because of  
6 the sentence imposed by the Court.

7 5. Ultimate Sentence The defendant acknowledges that no one has  
8 promised or guaranteed what sentence the Court will impose.

9 6. Loss Amount. The United States and the defendant agree that the  
10 correct amount of loss for the purposes of § 2B1.1 of the sentencing guidelines is  
11 Eighty-five Thousand Three Hundred Ninety-nine Dollars and Twenty-nine Cents  
12 (\$85,399.29).

13 7. - The defendant shall make restitution to Boeing Employees'  
14 Credit Union in the amount of Eighty-five Thousand Three Hundred Ninety-nine Dollars  
15 and Twenty-nine Cents (\$85,399.29), less any monies already paid or collected. Said  
16 amount shall be due and payable immediately.

17 8. Statement of Elements and Facts. The parties agree that the crime of  
18 bank embezzlement as charged in Count 1 of the Information is comprised of the  
19 following elements: The defendant was an employee of Boeing Employees' Credit  
20 Union; he took and converted the credit union's funds to his own personal use; he acted  
21 with the intent to injure and defraud the credit union; and the credit union's funds were  
22 at all relevant times insured by the National Credit Union Administration.

23 The parties further agree and stipulate that the following facts are true, provide  
24 proof of each element of the charged crime beyond a reasonable doubt, and form the  
25 factual basis for this guilty plea.

26 a. At all times relevant herein, the accounts and deposits of Boeing  
27 Employees' Credit Union were insured by the National Credit Union Administration.

1           b.     At all relevant times defendant was an employee in the ATM  
2 Reconciliation Department of Boeing Employees' Credit Union (BECU), Tukwila,  
3 Washington. His responsibilities included maintaining a general ledger which tracked  
4 and reconciled errors occurring between BECU and its ATM service provider, Trans  
5 Alliance. The defendant also maintained a BECU general ledger account for ATM  
6 receivables.

7           c.     Over an eight-month period beginning on or about February 21,  
8 2000, and continuing until on or about October 17, 2000, defendant used the two BECU  
9 general ledger accounts to embezzle funds and to cover up those thefts from BECU.

10           d.    In accomplishing his embezzlements, the defendant gave coworkers  
11 falsified reports to post to actual transactions, he obtained their passwords and teller  
12 numbers to conceal his transactions, and he asked coworkers to perform transactions  
13 with no verification on the co-worker's part.

14           e.    The defendant embezzled and converted BECU funds on  
15 approximately 25 occasions, for a total of about \$85,399.29.

16           f.    The defendant acted knowingly and with an intent to injure and  
17 defraud Boeing Employees' Credit Union and its customers.

18           g.    The above acts occurred within the Western District of Washington.

19        9.    Good Behavior. The defendant agrees to obey all local, state, and federal  
20 laws between the time of pleading and sentencing, and to serve any sentence imposed  
21 by the Court.

22        10.   Voluntariness of Plea. The defendant acknowledges that he has entered  
23 this plea agreement freely and voluntarily, and that no threats or promises, other than  
24 the promises contained in this plea agreement, were made to induce the defendant to  
25 enter this plea of guilty.

11. Limitation on Further Prosecution

The United States agrees not to initiate any further prosecution against defendant based on evidence now in its possession relating to the execution of the scheme to defraud Boeing Employees Credit Union.

12. Breach and Waiver

The defendant understands and agrees that if he breaches the plea agreement, he may be prosecuted and sentenced for all of the offenses he may have committed. The defendant agrees that if he breaches this plea agreement, the United States Attorney reserves the right to take whatever steps are necessary to nullify the plea agreement, including the filing of a motion to withdraw from the plea agreement and/or to set aside the conviction and sentence. The defendant also agrees that if he is in breach of this plea agreement, he is deemed to have waived objection to the reinstatement of any charges under the information which may have previously been dismissed or which may have not been previously prosecuted. The defendant further agrees that if he is in breach of this agreement, he is deemed to have also waived objection to the filing of any additional charges against him.

13. Completeness of Agreement.

The Government and the defendant acknowledge that these terms constitute the entire plea agreement between the parties.

Dated this 31<sup>st</sup> day of MAY, 2001.

  
NAZIM YISHMAEL  
Defendant

  
BRIAN TSUCHIDA  
Attorney for Defendant

  
KURT P. HERMANNNS  
Assistant United States Attorney